



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/160398

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 04, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's FS for September and October 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

Spanish Interpreter: Carlos [REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 20, 2014 petitioner completed an FS renewal. At that time it was determined that petitioner's rent of \$193 included heat, but that he paid for telephone and electricity.
3. On August 21, 2014 the agency issued petitioner a notice stating that effective September 1, 2014 his FS would be \$175.
4. On September 2, 2014 petitioner reported to the agency that his rent increased to \$215.
5. On September 3, 2014 the agency issued petitioner a notice stating that effective October 1, 2014 his FS would be \$195.

## DISCUSSION

FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full.

Petitioner did not understand why his FS decreased in September. As the agency explained at hearing, there was a mass change in policy that affected the shelter deduction. The policy in question relates to Operations Memo #14-16, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-16amended2.pdf>. I add for petitioner's information that this Operations Memo took effect due to federal changes made in The Agricultural Act of 2014 (P.L. 113-79). Petitioner can check this information at [http://www.fns.usda.gov/sites/default/files/LIHEAP\\_Implementation\\_Memo.pdf](http://www.fns.usda.gov/sites/default/files/LIHEAP_Implementation_Memo.pdf). As noted in the policy, this change was to take place for all FS applications with a filing date on or after April 28, 2014 and FS renewals processed on or after April 28, 2014 for a recertification period starting June 1, 2014, as it did here when he completed his renewal in August. As explained in the policy, petitioner is to receive the LUA (Limited Utility Allowance) of \$313 if he is obligated to pay, or actually paying for two or more of any non-heat qualifying utility expenses: phone, water, sewer, electric, cooking fuel, or trash. That is what was budgeted for him. See Exhibit 4.

Petitioner did not understand why his FS changed again in October. As the agency explained at hearing, his report of his rent increase on September 2, 2014 caused his FS to increase for October due to the change in this countable expense. Because he reported it in September, it caused the change in FS to occur in October pursuant to FS law and policy that provides:

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification.

*FS Handbook* §6.1.3.3; see also 7 CFR 273.12(c)(1).

The agency also explained that the October FS increased due to a mass Cost Of Living Adjustment (COLA) to the LUA. As of October 1, 2014 the LUA was raised to \$321. See Ops Memo DHS 14-37 Amended, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-37amended.pdf>. Thus, he received a greater deduction for that expense, and his FS increased accordingly.

The agency presented the budget screens to show how it determined petitioner's FS for both months. See Exhibits 4-5. Petitioner did not dispute the arithmetic. I have reviewed the information post-hearing as well and find no errors in the computations.

The petitioner also raised questions about a medical expense deduction. As the agency explained, a medical expense deduction is determined using verified allowable monthly medical expenses incurred by elderly, blind, or disabled FS group members exceeding \$35 per month. See *FS Handbook* §4.6.4. At this time, petitioner has not presented medical expenses exceeding \$35 monthly. If he does have medical expenses that exceed that monthly amount, he may provide them to the agency so that it may be considered for a deduction. The petitioner did not show at hearing that his expenses exceeded that amount to be considered here.

I remind the petitioner that if his income decreases, or has other changes to his household he must report and verify that to the agency so his FS can be redetermined. I understand that there are other expenses he incurs which makes it difficult to get by with the amount of FS allowed, but I can only consider those deductions authorized under the law. See 7 CFR 273.9(d) and see *FS Handbook*, §4.6.1. I add, assuming petitioner feels that this is not a fair determination, that I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

### **CONCLUSIONS OF LAW**

The agency correctly determined petitioner's FS for September and October 2015.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

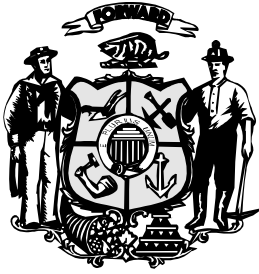
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of October, 2014

---

\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 23, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability